WILLS — REVOCATION — DIVORCE OF BENEFICIARY FROM TESTATOR. — A testator bequeathed a legacy to his wife describing her as such. After the execution of the will, but two years before the testator's death, the wife procured a decree of absolute divorce from him. *Held*, that the will is not impliedly revoked by the change of circumstances. Mitchell, C. J., dissented. *In re Jones' Estate*, 60 Atl. Rep. 915 (Pa.).

The English and American courts hold that a will is revoked by the subsequent marriage of the testator and the birth of issue, and that the revocation cannot be prevented by proof of extrinsic circumstances negativing the existence of the intention to revoke. *Marston* v. *Roe*, 8 Ad. & E. 14; *Nutt* v. *Norton*, 142 Mass. 242. Several American decisions have refused to imply a similar revocation from the fact of divorce. *Charlton* v. *Miller*, 27 Oh. St. 298; *Card* v. *Alexander*, 48 Conn. 492. The opposite result was reached in a Michigan decision, where, however, the court relied somewhat on the fact of a settlement made by the parties subsequently to the decree of divorce. *Lansing* v. *Haynes*, 95 Mich. 16. To permit evidence of circumstances occurring after the divorce to determine the validity of the will would not harmonize with the previously stated doctrine of implied revocation by marriage. Moreover, neither the inference of a change of intention nor the grounds of public policy are sufficiently clear to warrant the introduction of a doctrine of implied revocation as a matter of law from the fact of divorce.

BOOKS AND PERIODICALS.

I. LEADING LEGAL ARTICLES.

CONSTITUTIONALITY OF GENERAL ARBITRATION TREATIES. — In an article under this title Mr. Everett P. Wheeler makes a report in behalf of a committee of the American Bar Association, sustaining the constitutionality of general arbitration treaties. *The Constitutionality of General Arbitration Treaties*, 17 Green Bag 533 (Sept. 1905). Since the article contains little more than a mere statement of a general conclusion, it is of value chiefly because of the source whence it comes. The Hague Treaty of 1899 left the matter of arbitration entirely optional with the Powers, though a permanent court of arbitration was established. See FOSTER, ARBITRATION AND THE HAGUE COURT 42. Accordingly, in 1904, the President negotiated treaties with several of the Powers, whereby the contracting parties bound themselves to submit questions of a certain nature to the permanent court established at the Hague, in cases which might prove impossible of settlement by ordinary diplomatic methods. In the second article of each of these treaties it was provided, in accordance with Article XXXI. of the Hague Treaty, that, "in each individual case the high contracting parties, before appealing to the permanent court of arbitration, shall conclude a special agreement defining clearly the matter in dispute and the scope of the powers of the arbitrators, and fixing the periods for the formation of the arbitral tribunal and the several stages of the procedure." MOORE, TREATIES AND EXECUTIVE AGREEMENTS, 20 Pol. Sci. Quar. 385. For the word agreement in the instruments, however, the Senate substituted the word treaty. The incident closed with the President's refusal to acquiesce in this amendment. Whether the Executive has the constitutional power, independent of a general arbitration treaty, to conclude special agreements under the provisions of the Hague convention, has been much discussed. See FOSTER, THE TREATY-MAKING POWER UNDER THE CONSTITUTION, 11 Yale L. J. 69; HOLLS, THE PEACE CONFERENCE AT THE HAGUE 216; HYDE, AGREEMENTS OF THE UNITED STATES OTHER THAN TREATIES, 17 Green Bag 229. That he may constitutionally be given such a power by a general

arbitration treaty is the contention of Mr. Wheeler's committee, who maintain that no treaty-making power is thus delegated to the President; that though every treaty is an agreement, every agreement is not a treaty; and that the power of the President and the Senate to make treaties is not limited to the power to make special treaties only.

Mr. Wheeler's view seems to derive some support from a decision under the tariff act of Oct. 1, 1890, in which a somewhat similar question was involved. Section three of this act provided that whenever the President should be satisfied that the government of any country producing certain articles which were admitted free into the United States, imposed on products of the United States duties which he should deem reciprocally unreasonable, he should suspend the free introduction of these articles for such a time as he should deem just, during which time designated duties were to be paid. 26 U. S. STAT. AT L. 567. This was held constitutional. *Field* v. *Clark*, 143 U. S. 649. The court, after acquiescing in the general proposition that Congress cannot delegate its legislative power to the President, stated its position as follows: "It [the action of the President] was not making law. He was the mere agent of the law-making department to ascertain and declare the event upon which its expressed will was to take effect. . . . What has been said is equally applicable to the objection that the third section of the act invests the President with treaty-making power." See BUTLER, TREATY-MAKING POWER OF THE U. S. § 465, note 1.

Following out the analogy of this decision, it would seem that, although the President and Senate cannot delegate to the President the treaty-making power, yet they can frame a general arbitration treaty, in which the President is made the mere agent of the treaty-making department. The treaty gives a general ratification in advance, delegating to the President, as executive, the power of determining what individual instances fall within the scope of the ratification, and of making the necessary arrangements for carrying out the provisions for arbitration.

RIGHT OF CITY TO REQUIRE MATERIAL FOR ITS PUBLIC WORKS TO BE DRESSED WITHIN STATE. — A recent article criticising a late decision of the Missouri Supreme Court has brought into prominence a very interesting question of interstate commerce. *Municipal Ordinances relating to Materials entering into Public Works which Interfere with Interstate Commerce*, by Eugene McQuillin, 61 Cent. L. J. 65 (July 28, 1905). An ordinance of St. Louis provided that only rock dressed within the state should be used in any of the city's public works. The court held that this ordinance was not in conflict with the commerce clause of the Federal Constitution, but was an exercise of a city's "reasonable right to select material for street improvements." *Allen* v. *Labsap*, 87 S. W. Rep. 926. This proposition Mr. McQuillin attacks, on the ground that a city's "reasonable right" does not justify an interference with interstate commerce, and that such an interference existed in the case under discussion. Mr. McQuillin leads up to this main point by a preliminary exposition of the elementary principles of interstate commerce, followed by the statement of several cases. A number of the decisions cited, however, seem not in point; among them, People *v.* Coler (166 N. Y. 144), on which chief reliance is placed. The opinion was to the effect that a state law requiring cities to adopt such ordinances as that of St. Louis is invalid under the commerce clause of the Constitution. There the state was prescribing conditions, not for itself in its rôle of proprietor, but for its cities. Nor does any question there arise of the reasonable right of a city to select material for its own works. The United States Supreme Court in the case of Atkin *v.* Kansas (191 U. S. 207) rendered a decision which applies very forcibly to the point under discussion. A state law requiring an eight-hour day on all the state's public works was held valid, on the ground that the state acting as a proprietor has the same right as an individual in prescribing the conditions under which work for it shall be done. If the Union Pacific, for example, were to declare that only ties dressed in